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*Attorneys for Movants
Davin and Debbie Abrahamian*

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION,

- and -

PACIFIC GAS AND ELECTRIC COMPANY,

Debtors.

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric Company
☒ Affects both Debtors

** All papers shall be filed in the Lead Case,
No. 19-30088 (DM).*

Case No. 19-30088 (DM)
Chapter 11
(Lead Case)
(Jointly Administered)

**MOTION TO ALLOW/DEEM
TIMELY LATE FILING OF
PROOF OF CLAIM BY DAVIN
AND DEBBIE ABRAHAMIAN;
MEMORANDUM OF POINTS
AND AUTHORITIES;
DECLARATION OF CASEY A.
GEE IN SUPPORT THEREOF**

**Objection Deadline for the Fire
Victim Trust: November 28, 2022**

Hearing: Only if requested
Location: Via Zoom or Telephone

1 Fire Victim Claimants Davin Abrahamian and Debbie Abrahamian (hereinafter
2 “Movants”) respectfully file this Motion to allow the late filing of Movants’ proof of claim and
3 deem the proof of claim as having been timely filed.

4 Movants bring this Motion pursuant to the Court’s Order Consolidating Motions to File
5 Late Claims of August 24, 2022 (Dkt. No. 12875); Order re Supplemental Exhibit to Order
6 Consolidating Motions to File Late Claims of September 1, 2022 (Dkt. No. 12923); and Revised
7 Order Consolidating Motions to File Late Claims of September 28, 2022 (Dkt. No. 13010).
8 Pursuant to the Orders and in accordance with the procedures set forth therein:

9 **The Fire Victims Trust (“FVT”) must either (a) file an opposition to any**
10 **specific claimants or a statement of non-opposition within fourteen (14) days**
11 **of the filing of this motion.**

12 **I.**

13 **SUMMARY OF ARGUMENT**

14 A proof of claim may be deemed timely upon a showing of excusable neglect and lack of
15 prejudice. The Supreme Court in *Pioneer Investment Services v. Brunswick Associated Ltd.*
16 *Partnership*, 507 U.S. 380 (1993) set forth the factors that must be considered in ruling on
17 whether a late claim should be allowed in the context of a bankruptcy filing. These factors to be
18 considered are as follows:

- 19 1. The danger of prejudice to the Debtor;
- 20 2. The length of delay and its potential impact on judicial proceedings;
- 21 3. The reason for the delay, including whether it was within the reasonable control of the
22 movant, and
- 23 4. Whether the movant acted in good faith.

24 *Pioneer Investment Services, supra*, at 395.

25 As set forth below and in the accompanying Declaration of Casey A. Gee, the Movants
26 meet all these factors. Indeed, if this Motion is not granted, it is the Movants who will suffer
27 substantial prejudice. Because there is no danger of prejudice to the Debtors, as Debtors’ estates
28 are solvent, and all creditors in these cases stand to be paid their pro rata shares, the Motion should

1 be granted to allow the Movants to have their claims deemed timely.

2 **II.**

3 **PROCEDURAL BACKGROUND**

4 On January 29, 2019, the Debtors, PG&E Corporation and Pacific Gas and Electric
5 Company (“Debtors”) filed a voluntary Chapter 11 Petition. *See* Dkt. 1. On July 2, 2019, the
6 Court entered an Order establishing October 21, 2019 (“bar date”) as the deadline for Fire Victim
7 claimants to file proofs of claim in this bankruptcy. *See* Dkt. 2806. That deadline was extended to
8 December 31, 2019 (“extended bar date”). *See* Dkt. 4872.

9 On January 31, 2020, the Debtors filed an Amended Chapter 11 Plan Debtor’s and
10 Shareholder Proponents’ Joint Chapter 11 Plan of Reorganization. *See* Dkt. 5590. On June 19,
11 2020, after filing multiple iterations of the Plan, Debtors filed an Amended Joint Chapter 11 Plan
12 of Reorganization (“Final Plan”). *See* Dkt. 8048. On June 20, 2020, the Bankruptcy Court
13 entered an order confirming the Final Plan. *See* Dkt. 8053.

14 Prior to December 31, 2019, nearly 38,000 fire victims filed timely claims. Since then,
15 thousands of late claims have been submitted and dozens of late claims have been permitted as
16 timely by the Court through stipulations and orders. Others have been permitted as timely without
17 stipulations, due to no opposition by the FVT. It is clear by the volume of late claims that many
18 families and individuals impacted by the subject Fires, including the Camp Fire, were unaware
19 that they had any remedies, claims for relief, or causes of action.

20 **III.**

21 **LEGAL ARGUMENT**

22 The time in which to make claims in a Chapter 11 Bankruptcy may be extended by motion
23 based upon excusable neglect. Federal Rules of Bankruptcy Procedure, Rule 9006(b)(1) provides:

24 (b) Enlargement.

25 (1) In general. Except as provided in paragraphs (2) and (3) of this
26 subdivision, when an act is required or allowed to be done at or within a specified
27 period by these rules or by a notice given thereunder or by order of court, the court
28 for cause shown may at any time in its discretion (1) with or without motion or
notice order the period enlarged if the request therefor is made before the expiration
of the period originally prescribed or as extended by a previous order or (2) on

1 **motion made after the expiration of the specified period permit the act to be**
2 **done where the failure to act was the result of excusable neglect.**

3 Fed. R. Bank. Proc. 9006(b)(1) (emphasis added).

4 Determination of excusable neglect has been interpreted by the United States Supreme
5 Court as an equitable consideration.

6 We conclude the determination at bottom an equitable one, taking account of all
7 relevant circumstances surrounding the party's omission. These include... the
8 danger of prejudice to the debtor, the length of the delay and its potential impact on
9 judicial proceedings, the reason for delay, including whether it was within the
10 reasonable control of the movant, and whether the movant acted in good faith.

11 *Pioneer In. Servs. V. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 395 (1993).

12 Importantly, a late-filed proof of claim is allowable where a creditor had actual notice of
13 the bankruptcy, but, due to some external reason, failed to file a proof of claim or did not realize
14 that she or he had to prior to the bar date. See, e.g., *ZiLOG, Inc. v. Corning (In re ZiLOG, Inc.)*,
15 450 F.3d 996, 1006 (9th Cir. 2006) (applying the *Pioneer* factors). Notably in this case, there was
16 no widely distributed notice to residents impacted by the subject fires.

17 First, there is no danger of prejudice to the Debtors. Where the claim does not disrupt the
18 distribution process, no prejudice will result. *In re Sacred Heart Hosp.*, 186 B.R. 891, 897.
19 ("Exactly how the debtor's assets are distributed is ultimately of little consequence to the debtor,
20 so long as the claim is not filed so late as to disrupt the distribution process."). The Debtors'
21 estates are solvent, and all creditors stand to be paid their initial pro rata share, which is presently
22 at 45%. See, e.g., *In re Best Payphones, Inc.*, 523 B.R. 54, 75-76 (Bankr. S.D.N.Y. 2015) and *In*
23 *re Sheehan Mem'l Hosp.*, 507 B.R. 802, 803 (Bankr. W.D.N.Y. 2014) (where the Chapter 11
24 estate is solvent, "the proper remedy for a late filing is not the expungement of a claim, but its
25 allowance as a tardily filed claim only). As of now, it is understood that claims for which
26 determination notices are issued are receiving 45% of the determination award (their initial pro
27 rata share). It is understood that the additional 55% of such determination awards has been set
28 aside by the FVT. And, beyond that, the FVT is still solvent.

Second, the delay is not significant. Upon receiving all the necessary information,
Movants' filed their Proof of Claim on October 26, 2022. At this time, the Trust had only issued

1 determinations (not reconsiderations or appeals) to approximately 80% of the claimants. Allowing
2 the late claim will not delay the proceedings. Moreover, Movants' claims will have essentially
3 zero impact on the judicial proceedings and will not change PG&E's reorganization process.
4 There are tens of thousands of similarly situated claimants as Movants, whose claims will be
5 placed among them, resulting in no noticeable impact upon the distribution process.

6 Third, as set forth in Exhibit A to the Declaration of Casey A. Gee, the reasons for delay in
7 filing a claim constitute excusable neglect. Excusable neglect will be found even where
8 sophisticated attorneys miss a deadline. *In re ZiLOG, Inc., supra*, 450 F.3d at 1006. The case for
9 excusable neglect is even more compelling when the mistake was made by an unrepresented
10 layperson. *Id.* Movants' delay in filing the subject claim is reasonable. Very shortly after
11 becoming aware that the damages that arose from the Camp Fire might be compensable, Movants
12 obtained counsel and filed a proof of claim. Additionally, there was little to no substantial effort
13 by any interested party in this case to alert prospective claimants of their right or entitlement to file
14 a claim, other than third-party advertisements. The Ninth Circuit, relying on the Pioneer factors,
15 held that a bankruptcy court abused its discretion in declining to excuse various women's failure
16 to timely file proofs of claims (with respect to retention bonuses), where debtor's general
17 counsel's email was not calculated to inform employees that they needed to file their wage claims
18 against the debtor in bankruptcy court. *In re ZiLOG, Inc., supra*, at 1003. When comparing this
19 to the Movants, who received no notice whatsoever of their potential entitlement to file claims,
20 this lack of substantive notice placed many individuals without any knowledge of their remedies,
21 including Movants.

22 Further, Movants herein acted in good faith. The failure to file was not based on litigation
23 tactics where a party deliberately misses a deadline to gain advantage. *See, e.g., Venice Baking*
24 *Co. v. Sophast Sales & Mkg. LLC*, 2016 U.S. Dist. LEXIS 141533 (denying relief because counsel
25 purposefully chose not to oppose a motion as a litigation tactic). Here, the delay was inadvertent
26 and due to Movants' lack of understanding of the claims process. Due to the substantial trauma,
27 relocation, and the immense pressure resulting from the foregoing, the Movants did not become
28 aware of the relevant bar dates in time to timely file the claim. It was not until after the Extended

1 Bar date and Claims Questionnaire Deadline that Movants realized their damages may be
2 compensable and that they should file a proof of claim for their losses.

3 Finally, the likelihood of injustice is great if this claim is not permitted. Movants are
4 Camp Fire victims whose primary avenue for compensation is through this Bankruptcy. The FVT
5 has been routinely permitting the late claims to be allowed, where such tardiness is excusable
6 under the *Pioneer* factors and foregoing.

7 IV.

8 **CONCLUSION**

9 For the reasons set forth above, Movants respectfully request that this Court enter an Order
10 pursuant to Bankruptcy Rule 9006(b)(1) as follows:

- 11 1. Granting the Motion in its entirety;
12 2. Finding that the Proof of Claim file by the Movants are to be allowed as having been
13 timely filed; and
14 3. Granting such other or further relief as the Court deems just and proper.

15
16 DATE: November 14, 2022

Respectfully submitted,

17 TLO LAW, P.C.

18
19 By: /s/ Casey A. Gee

20 ROBERT W. THOMPSON

CASEY A. GEE

Attorneys for Movants

21 Davin Abrahamian and Debbie Abrahamian
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1. I am over eighteen (18) years old and am competent to testify as to the matters set forth hereinbelow, from my personal knowledge-except as to those matters set forth upon information and belief.

3. If called upon as a witness, I could and would competently testify as to the facts set forth in this Declaration, which are made based upon my personal knowledge or information collected by my staff from the claimants that my firm represents. Such representation is set forth in Exhibit A, attached hereto, with further brief explanations received from the claimants that my firm represents.

4. I have reviewed the foregoing Motion to Allow/Deem Timely Late Filing of Claimants Proofs of Claims, and Memorandum of Points and Authorities in Support Thereof (the “Motion”) and the attached Exhibit A. To the best of my information and knowledge, the factual allegations in the Motion are true and correct.

I declare under penalty of perjury under the laws of the United States and of the State of California, that the foregoing is true and correct. Executed on November 14, 2022.

By: /s/ Casey A. Gee
CASEY A. GEE

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on November 14, 2022, a copy of the foregoing was filed
3 electronically. Notice of this filing will be sent by operation of the Court's electronic filing
4 system to all parties indicated on the electronic filing receipt. Parties may access the filing
5 through the Court's filing system.

6
7 Executed this 14th day of November 2022.

8 By : /s/ Casey A. Gee
9 CASEY A. GEE

1 **EXHIBIT A: CLAIMANTS**

2 (1) Davin Abrahamian and Debbie Abrahamian; Proof of Claim No. 109640; Filed: 10/26/22.

3 On November 8, 2018, Davin Abrahamian and Debbie Abrahamian, spouses, were owners
4 of the property located at 4695 Sandpiper Lane, Paradise, CA 95969, which was their primary
5 residence at the time of the Camp Fire. The Abrahamian's real and personal property were
6 damaged by the fire, smoke, soot, and ash from the Camp Fire, including the loss of hundreds of
7 trees. Additionally, the Abrahamians were forced to evacuate their home and relocate for months
8 resulting in monetary damages, nuisance, and emotional distress due to their proximity to the zone
9 of danger and loss of community. During this time, Mr. Abrahamian had been suffering from and
10 in the process of treating serious medical conditions. Due to the substantial trauma, relocation,
11 medical issues, and the immense pressure resulting from the foregoing, the Abrahamians were
12 unaware that their damages and injuries might be compensable prior to the Extended Bar Date and
13 Claims Questionnaire Deadline. Soon after discovering their damages might be compensable, the
14 Abrahamians hired counsel and filed their claim in October 2022.